Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
The Development of Operational,	)	
Technical, and Spectrum Requirements	)	WT Docket No. 96-86
for Meeting Federal, State and Local	)	
Public Safety Agency Communication	)	
Requirements Through the Year 2010	)	

To: The Commission

REPLY COMMENTS OF UTC

Pursuant to Section 1.415 of the FCC's Rules, UTC, the Telecommunications Association ("UTC") hereby submits its reply to certain of the comments filed in response to the Notice of Proposed Rule Making, FCC 96-155, released April 10, 1996, (NPRM) in the above-captioned matter.[1] Through this proceeding, the FCC intends to establish a plan to meet public safety communications needs through the year 2010.

UTC's Comments in this docket were directed primarily to concerns that the multi-part definition of "public safety" proposed by the Public Safety Wireless Advisory Committee (PSWAC) focuses almost exclusively on functions performed by Federal, state or local government entities, even though the accompanying reports acknowledge the many critical safety-related functions that are performed by non-governmental entities, including private utilities. UTC agreed with PSWAC's recommendation that if the FCC consolidates

[1] By Order, DA 96-1990, released November 27, 1996, the reply comment date was extended to December 19, 1996.

the current Part 90 radio services, it would be prudent to consolidate them into three service pools consisting of Public Safety, Public Service, and Business/Commercial. UTC also disagreed with the recommendation of the PSWAC Spectrum Requirements Subcommittee that any channels created as a result of the "refarming" initiative should be reallocated to public safety.

I. Definition of "Public Safety"

At the recommendation of the Interoperability Subcommittee, PSWAC adopted a multipart definition of Public Safety and a closely related definition of Public Services:

> 4.3.2.1 ***Public Safety:*** *The public's right, exercised through Federal, State or Local government as prescribed by law, to protect and preserve life, property, and natural resources and to serve the public welfare.*
>
> 4.3.2.1.1 ***Public Safety Services:*** *Those services rendered by or through Federal, State, or Local government entities in support of Public Safety duties.*
>
> 4.3.2.1.2 ***Public Safety Services Provider:*** *Governmental and public entities or those non-governmental, private organizations, which are properly authorized by the appropriate governmental authority whose primary mission is providing Public Safety services.*
>
> 4.3.2.1.3 ***Public Safety Support Provider:*** *Governmental and public entities or those non-governmental, private organizations which provide essential public services that are properly authorized by the appropriate governmental authority whose mission is to support Public Safety services. This support may be provided either directly to the public or in support of Public Safety services providers.*
>
> 4.3.2.2 ***Public Services:*** *Those services provided by non-Public Safety entities that furnish, maintain, and protect the nation's basic infrastructures which are required to promote the public's safety and welfare.*

Commenters were generally supportive of the proposed definitions, with the primary criticism echoing UTC's concern that PSWAC would have the FCC judge "public safety" on

the governmental status of the entity, instead of the functions performed. UTC agrees with the FCC's tentative conclusion that Public Safety should be defined by reference to responsibility and function, and not necessarily the nature of the entity providing that function.[2] Different regulatory policies or considerations may apply depending on the nature of the entity providing the service, but from the public's standpoint, the key consideration is the service which it receives.

There is widespread recognition, even among "traditional" public safety organizations that Public Service entities must be able to interoperate with emergency response organizations.[3] The New York Transit Authority (NYTA), for example, described several recent incidents requiring close coordination among public safety/public service organizations. In one reported incident, failure of a ConEdison electric transformer near a subway "hub" station knocked out power to the signal system on the Manhattan Bridge and in surrounding tunnels, requiring the evacuation of thousands of passengers from ten stranded trains, and necessitating very close coordination among the crews responding to this situation. AASHTO suggests that the definitions of public safety could be expanded "to reflect the fact that other public service providers are often active participants with traditional public safety organizations in emergency response operations."[4] NRECA notes that in many instances, utility crews are the first to arrive at the scene of an accident; *e.g.*,

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[2] NPRM, para. 25.

[3] Association of Public-Safety Communications Officials-International, Inc. (APCO), p. 6; Minnesota Department of Transportation, p. 5; American Association of State Highway Transportation Officials (AASHTO), pp. 8-9; National Rural Electric Cooperative Association (NRECA), p. 3; American Petroleum Institute (API), pp. 15-16; City of Mesa, Arizona, p. 5; Northern California Chapter of APCO, pp. 3-4; International Association of Chiefs of Police (IACP), p. 2; New York City Transit Authority, p. ; International Municipal Signal Association and International Association of Fire Chiefs (IMSA/IAFC), pp. 9-11; John S. Powell, p. 6

[4] AASHTO, p. 8.

when responding to a reported power outage and finding a utility pole that has been struck by a vehicle.[5] Likewise, the American Water Works Association (AWWA) points out the close interplay between maintenance of an adequate water supply with sufficient pressure for firefighting purposes, as well as the current interoperability requirements necessitated by the Federal Emergency Management Agency (FEMA) Incident Command System (ICS), which defines a clear protocol and assignment of roles between multiple agencies, including utilities, responding to an incident.[6]

Like UTC, other commenters question whether the definitions suggested by PSWAC are too narrowly focused on government agencies, without regard to functions performed.[7] As noted by Ericsson, Inc., a narrow definition of public safety would create the "risk of excluding entities (e.g., privately owned utilities) that provide vital facilities and services whose maintenance and restoration of which may require coordination with more traditionally defined public safety agencies." Ericsson urges a sufficiently encompassing definition of public safety that recognizes, "as the Commission did in its Notice, that organizations such as utilities, pipeline companies, petroleum companies and railroads (a) are involved in the provision of basic infrastructures that are critical to the public's safety and welfare, (b) can be involved in, for example, emergency responses following manmade or natural disasters, and (c) may require close coordination between them and public safety entities if they are involved in such emergency activities."[8] Similarly, Aeronautical Radio, Inc. (ARINC) recommends that determination of public safety services should first involve

[5] NRECA, p. 3.
[6] AWWA, pp. 2, 4-5.
[7] American Automobile Association, p.2; Ericsson, pp. 8-9; Alarm Industry Communications (AICC), p. 2; U.S. Department of Transportation, p. 8.
[8] Ericsson, pp.7-8.

an identification of those services that are truly safety services, making sure that safety and emergency communications are met for both public and private sector organizations.[9] ITS America correctly observes that the current division suggested by the PSWAC definitions fail to include all functions and responsibilities of the various public safety agencies or the public safety activities of utility, pipeline, petroleum and other entities providing essential public services.[10]

UTC therefore recommends that the FCC adopt definitions of Public Safety and Public Service that adequately encompass the public safety functions of governmental as well as non-governmental providers of services that protect and preserve life, property, and natural resources and serve the public welfare.

II. Transition Issues

In its Comments, UTC concurred with the position of the PSWAC Transition Subcommittee that if the FCC consolidates the various Part 90 radio services, it would be prudent to consolidate them into three service pools: Public Safety, Public Service and Business/Commercial.[11] This pooling concept was also supported by most commenters who addressed this issue.[12] The only objections to this recommendation were filed by associations representing the two extremes on the pool consolidation issue. The Association of American Railroads (AAR) objects to any pooling proposal that would alter the *status quo* and require the railroads to share their channels with any other user groups. At the other

[9] ARINC, p. 4.
[10] ITS America, p. 5.
[11] PSWAC Final Report, Appendix E, Sections 4.4.8 - 4.4.17.
[12] AAA, p. 2; API, p. 6; AICC, p. 2; New York State Police (NYSP), p. 2.

extreme, the Industrial Telecommunications Association (ITA) has been a vocal proponent of complete consolidation of "non-public safety" radio services.

UTC has no doubt that AAR would prefer the *status quo* under which railroads are ensured priority access to one of the largest allocations of private land mobile channels. However, AAR must also concede that the railroads are currently sharing many of these channels with users from other radio services where it can be demonstrated, under the intercategory sharing rules, that such usage will be compatible with railroad usage. In its Comments, AAR raises the specter of an electric utility or a police department using a railroad channel and causing interference that jeopardizes train movements, with the possibility that the interfering user may not be willing to cease transmissions immediately.[13] Such concerns are unfounded, as utilities are today licensed on railroad channels, with no apparent impact on railroad operations.

In contrast to the extreme consolidation proposal of ITA, the three service pools recommended by PSWAC will ensure that (1) entities with similar priorities for access to channels will not have to contend for channels, at the application stage, with higher density users, and (2) spectrum management within pools will be facilitated by limiting both the number of user groups in each pool and by grouping them along functionally similar lines.

ITA's proposal to collapse all of the Part 90 radio services into two pools (public safety and everybody else) appears designed more to serve ITA's frequency coordination business than the spectrum needs of the private radio licensees ITA purports to represent. ITA complains that PSWAC did not have input from industrial and business radio users,

[13] AAR, p. 14.

completely ignoring that the PSWAC process was open to the public and that industrial and business users were in fact represented in those discussions.

ITA further complains that consolidation of radio services into three pools, instead of two, is short-sighted, unjust, and prejudicial to the industrial services that were "arbitrarily excluded" from the definition of Public Services.[14] ITA misconstrues the nature of the distinctions between "Public Service" licensees and "Business/Commercial" licensees. These distinctions are not based merely on the "social utility" ultimately served by the licensee, as claimed by ITA. Rather, prioritization of access to spectrum should be governed by reference to the relative immediacy of access required in relation to the functions performed by the user in providing essential public services. A fundamental question that should be asked is whether the delay or disruption of communications systems used by workers in this industry will have consequences to public safety, health or welfare. To use ITA's examples, disruption of communications at a nuclear power plant could precipitously, and for an extended period time period, terminate electric power to an entire population; by contrast, it is extremely unlikely that disruption of communications at a uranium mine - although relevant to the long-term operation of nuclear power plants - could have such immediate and widespread consequences.

There is nothing novel or "arbitrary" about the government setting priorities for purposes of protecting national security and emergency preparedness. The Telecommunications Service Priority (TSP) system, for example, includes clearly defined priorities for the provisioning or restoration of public communications services when service

[14] ITA, p. 4.

providers are unable to accommodate all such requests following a generalized service disruption.[15] As noted in UTC's Comments in this proceeding, in an "ideal" world, priority access to limited channels could be controlled by assigning priority access codes to certain users or classes of users, similar to the system described in the petition in this docket from the National Communications System (NCS) for a cellular priority access system. However, the private land mobile bands are far from "ideal" and even in the case of the system proposed by NCS for the cellular service, there are significant technological limitations on the type of priority access that can be provided in this manner. Nevertheless, and despite ITA's assertions to the contrary, it is very well accepted that the Commission can, and must, establish certain priorities for the "purposes of national defense" and in order to "promote the safety of life and property."[16]

UTC therefore joins PSWAC and the other commenters in recommending that, if Part 90 radio services are consolidated, the services should be grouped and prioritized into Public Safety [or Emergency Response], Public Service, and Business/Commercial.

III. Spectrum Requirements Issues

UTC strongly disagreed with the recommendation of the PSWAC Spectrum Requirements Subcommittee that any new channels created as a result of the "refarming" initiative should be immediately reallocated to public safety. UTC noted that such a policy would be a disincentive for current licensees in these bands to implement spectrum-

[15] 47 C.F.R. § 64.401 & Appendix A.
[16] 47 U.S.C. §151.

conserving technologies. Second, it is unclear when refarming will actually produce "new" channels, nor is it clear how many such channels can be anticipated.

The recommendation to reallocate all refarmed spectrum to public safety was opposed by a number of other commenters, including APCO.[17] As noted by the International Association of Chiefs of Police:

> Deliberations of the various committee observers from IACP indicated that compelling cases were made by the transportation, utilities, and other industrial users as to the use of radio spectrum in the safety of life and property in their operation, as well as the need at times to interoperate with Public Safety. They expect that their need to expand this type of communications will continue to increase, thus requiring the use of any "re-farmed" spectrum to fulfill these needs. It is IACP's position that their spectrum should not be considered a part of the solution for the Public Safety spectrum shortfall.[18]

UTC agrees, and urges the FCC to reject this recommendation from the Spectrum Requirements Subcommittee.

IV. Conclusion

Through the present proceeding, the FCC has an opportunity to establish a record on which it can remain true to its mandate, in the Communications Act, to allocate spectrum in the public interest and to ensure the safety of life and property. In developing policies for "public safety" use of the spectrum, the FCC should focus on functions, not just the nature of the entity providing the service, and should adopt definitions accordingly. Similarly, if radio services are consolidated, contention for access to limited private radio channels can best be controlled through the three-pool approach recommended by PSWAC.

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[17] APCO, p. 19, n. 9; API, pp.21-24; AAR, p. 10; IACP, p. 2.
[18] IACP, p. 2.

WHEREFORE, THE PREMISES CONSIDERED, UTC respectfully urges the Federal Communications Commission to take action in this proceeding in accordance with the views expressed herein.

Respectfully submitted,

UTC

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